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The situation of human rights and fundamental freedoms of indigenous people

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, pursuant to paragraph 18 of Commission on Human Rights resolution 2005/51.

* A/62/150.

** The submission of the Special Rapporteur's report was delayed owing to the need for consultations.

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Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Summary

The present report, on activities carried out between October 2006 and July 2007, highlights some indigenous rights issues which the Special Rapporteur deems to be worthy of special attention.

The report is divided into different sections that describe the various activities carried out by the Special Rapporteur in the framework of his mandate, such as following up on his recommendations, promoting indigenous rights and providing technical advice in that regard. This report includes the Special Rapporteur's views on new challenges with respect to the protection of indigenous peoples' rights throughout the world, as well as a specific analysis of the situation of indigenous rights in Asia.

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I. Introduction

1. This is the fourth report submitted to the General Assembly by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. During the period under review, the Special Rapporteur submitted his annual report to the Human Rights Council at its fourth session (A/HRC/4/32 and Add.1-4). The present report is submitted pursuant to Commission on Human Rights resolution 2005/51.

2. The period under review encompasses the activities carried out between 3 October 2006 and 31 July 2007. Like the Special Rapporteur's preceding report to the General Assembly (A/61/490), this year's report refers in particular to a number of issues which, in his view, are of special importance for the promotion and protection of indigenous peoples' rights. The report also includes an analysis of the situation of indigenous peoples in Asia, an issue that was specifically considered at the sixth session of the Permanent Forum on Indigenous Issues.

II. Mandate

3. The Special Rapporteur's mandate was established by Commission on Human Rights resolution 2001/57 and was renewed by Commission resolution 2004/62 and by Human Rights Council decisions 1/102 and 5/101.

4. By its resolution 2005/51, the Commission on Human Rights requested the Special Rapporteur to begin preparing a study regarding best practices carried out to implement the recommendations contained in his annual reports. Accordingly, the Special Rapporteur submitted a report on the subject to the Human Rights Council at its fourth session.

III. Activities carried out by the Special Rapporteur in fulfilment of his mandate

A. Report to the Human Rights Council

5. On 20 March 2007 the Special Rapporteur submitted his second report to the Human Rights Council; this was the sixth annual report under his mandate. The report covered the activities carried out between September 2006 and March 2007. During that time, the Special Rapporteur continued to focus, as in previous years, on three main areas: the investigation and thematic development of issues affecting the situation of human rights and fundamental freedoms of indigenous people; country visits; and urgent appeals and alleged violations concerning indigenous peoples' human rights and fundamental freedoms.

6. The Special Rapporteur's main report and its annexes (A/HRC/4/32 and Add.1-4) contain information on the activities carried out in these three areas. Four annexes were submitted this year, concerning communications received and exchanged during the reporting period on alleged violations of indigenous peoples' human rights and fundamental freedoms (Add.1); the report of the Special Rapporteur's visit to Ecuador from 24 April to 4 May 2006 (Add.2); the report of his visit to Kenya from 4 to 14 December 2006 (Add.3); and the final version of his

study regarding best practices carried out to implement the recommendations contained in his annual reports, submitted at the request of the Commission on Human Rights (Add.4).

7. In his most recent report, the Special Rapporteur sought to draw the attention of the Human Rights Council and the international community as a whole to the new challenges affecting the survival of indigenous peoples' as peoples, with a view to guiding the efforts of Governments, international human rights bodies and civil society to better protect the rights of these peoples.

8. One trend that has gained momentum in recent years is the steady decline in indigenous territories, including indigenous peoples' loss of control over their natural resources. This process has been intensified by the dynamics of the globalized economy and, in particular, by the spread of new ways of exploiting energy and water resources.

9. The Special Rapporteur's report to the Human Rights Council also contains an analysis of the situation of communities that are particularly vulnerable as a result of various processes that cause them to lose control over their traditional lands and resources. This is the case, in particular, of forest peoples, which are deprived of their traditional living spaces with virtually no compensation or economic alternatives. Of special concern is the situation of the few communities that remain isolated in remote areas of tropical forests, which are now in danger of losing their traditional territories to powerful economic interests and are at serious risk of disappearing completely. Also in jeopardy is the existence of pastoral peoples in arid and semi-arid regions, owing to the privatization and division of their traditional grazing lands or the creation of nature reserves, which are gradually reducing their traditional living areas.

10. Extractive activities, large commercial plantations and unsustainable consumption patterns have led to widespread pollution and environmental degradation, which have been decried by world public opinion. These processes have a particularly serious impact on indigenous peoples, whose way of life is closely linked to their traditional relationship with their lands and natural resources. A breakdown in this relationship often leads to the forced displacement of indigenous communities; this, in turn, increases poverty and seriously undermines these peoples' nutrition, health and well-being.

11. To defend their rights and express their needs, indigenous people turn to various forms of organization and social mobilization that often represent the only means of making their demands heard. All too often, however, social protest is criminalized, giving rise to additional and sometimes serious human rights violations.

12. Increased migration by indigenous people is another reflection of globalization and of the inequality and poverty it engenders. Indigenous migrants are particularly vulnerable to human rights violations if they work in the agricultural or mining sectors, move to urban areas or emigrate to other countries. Forced migration of indigenous peoples is the result of the often desperate circumstances they experience in their places of origin.

13. Lastly, this year's report draws the Human Rights Council's attention to the persistently disadvantageous situation of indigenous women in many parts of the world. In the course of his six-year mandate, the Special Rapporteur has personally

heard and received a great deal of information on the discrimination, violence and abuse perpetrated against indigenous women, particularly adolescents and girls, in both rural and urban areas; in their countries of origin and abroad, where they are sometimes forced to emigrate; and occasionally in their own communities. Special attention to violations of indigenous women's rights is not yet provided for in the human rights protection agenda, and the efforts made to date by some of the specialized agencies of the United Nations are still incomplete.

B. Study regarding best practices carried out to implement recommendations

14. Together with his main report, the Special Rapporteur submitted, for the Human Rights Council's consideration, the final version of a study regarding best practices carried out to implement the recommendations contained in his annual reports, pursuant to Commission on Human Rights resolution 2005/51 (A/HRC/4/32/Add.4). In preparing the study, the Special Rapporteur took into account the results of various national meetings held in follow-up to his previous visits, which took place in Guatemala, Canada (see paras. 25-27 below), Mexico (paras. 28 and 29) and the Philippines (paras. 30 and 31); the work of the international expert seminar held in Montreal (para. 32); and the communications sent by various civil-society human rights observatories.

15. The study refers to a series of initiatives taken by Governments, international agencies, civil society and indigenous peoples themselves to implement the recommendations contained in the Special Rapporteur's reports. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has continued to implement a follow-up project in Mexico and Guatemala, with the active participation of both Governments and of indigenous organizations, to help ensure the effective implementation of the recommendations in those countries. One conclusion of the study is that implementation has been most effective in cases where there are specific initiatives, such as those of Mexico and Guatemala, that contribute to coordinated, systematic action on the part of the various stakeholders.

16. In addition to the above-mentioned thematic studies, the Special Rapporteur's most recent report to the Council included, as annexes, reports on his official visits to Ecuador — to which he had already referred in his preceding report to the General Assembly (A/61/490, paras. 20-24) — and Kenya.

C. Official visit to Kenya

17. Kenya's indigenous communities consist of minority hunter-gatherers and pastoralists, such as the Elmolo, Yakuu, Sengwer, Maasai and Ogiek, who live mostly in the arid and semi-arid lands and in the few forests that remain in the country. Their livelihoods and cultures have been traditionally discriminated against and their lack of legal recognition and empowerment reflects their social, political and economic marginalization.

18. The principal human rights issues they face relate to the loss and environmental degradation of their land, traditional forests and natural resources, as a result of dispossession in colonial times and in the post-independence period. In

recent decades, public policies such as the State's various attempts to modernize and sedentarize nomadic communities, or programmes to privatize communal ranches, have worsened these communities' economic, social and cultural rights situation. These circumstances have been made even more difficult by the frequent cases of corruption that have arisen in the allocation of Government and trust lands.

19. Special mention should be made of the growing difficulties faced by some of these communities as a result of their eviction to make way for the creation of protected natural areas in their ancestral lands. While these parks serve to generate foreign exchange for the national economy, their creation remains highly controversial because of violations of the land and resource rights of neighbouring communities, which are not allowed to carry out their traditional hunting and herding activities in these areas and, to date, have not been able to participate fully in their management or to benefit from the income they generate.

20. Social and infrastructure services in indigenous areas are inefficient and, in many cases, simply non-existent, with the result that these areas' poverty levels are above the national average. Indigenous children and women are particularly affected by the lack of access to social services on an equal footing with majority sectors of the country's population. They are also discriminated against with respect to property rights and are victims of harmful traditional practices such as female genital mutilation, which is also practised on many other girl children and adolescents in Kenya.

21. The democratization process in Kenya has permitted the emergence of indigenous organizations and networks that have succeeded in placing their concerns on the national agenda, especially in discussions on constitutional reform. The Government has announced important initiatives such as various community development projects in arid and semi-arid regions, as well as a universal primary education programme. It has also recognized the need for affirmative action in favour of herding and hunter-gatherer communities, especially in the poverty reduction strategy.

22. The Special Rapporteur, on the basis of his visit to Kenya this year, as well as his previous visit to South Africa (see E/CN.4/2006/78/Add.2) and his conversations with members of the African Commission on Human and Peoples' Rights and with other experts, has formulated some ideas on the problems of indigenous peoples which he would like to share with the members of the General Assembly.

23. In Kenya, as in other countries of the continent, all Africans are indigenous to the country, since most Kenyans are descended from the original inhabitants and in colonial times were considered "natives" by the authorities, regardless of their tribal or ethnic affiliation. At independence all inhabitants became free and equal citizens of the new States. However, geographic conditions and historical, social and cultural circumstances became defining characteristics that differentiated among the many tribes that now populate these countries. Thus, in many African countries the contested use of the term "indigenous" has implications for policy decisions and therefore for the human rights of the populations concerned. From a human rights perspective, the question is not who came first but the shared experiences of dispossession and marginalization. The term "indigenous" is not intended to create a special class of citizens, but rather to address historical and present-day injustices and inequalities. It is in this sense that the term has been applied in the African context by the Working Group on Indigenous Populations/Communities of the

African Commission on Human and Peoples' Rights, and this is also the intent of the Special Rapporteur's recommendations to African countries.

D. Follow-up activities

24. As in previous years, the Special Rapporteur has also focused on the question of the implementation of the recommendations contained in his annual reports and, in particular, those contained in his reports on country visits. These activities have provided important input to the aforementioned study on best practices (see paras. 14 and 15 above). Follow-up activities are a very useful way of strengthening dialogue among Governments, civil society, indigenous organizations and other relevant stakeholders involved in the implementation of the Special Rapporteur's recommendations, insofar as the latter make a meaningful contribution to the ultimate aim of promoting and protecting the rights of indigenous peoples.

25. Follow-up activities have included a forum entitled "Closing the implementation gap", which took place in Ottawa on 2 and 3 October 2006 and was attended by representatives of the Government and of various Canadian indigenous and human rights organizations. The forum made it possible to highlight experiences and identify ongoing obstacles to the implementation of the recommendations made to the Canadian Government by the Special Rapporteur during his official visit to the country in 2003 (see A/HRC/4/32/Add.4).

26. In recent years, the Canadian Government has adopted a series of measures relating to the human rights of indigenous peoples, which are mentioned in the relevant reports. Examples of such measures include the reparations awarded to victims of the residential school system for indigenous children, support for an educational programme designed to combat violence against indigenous women and a legislative reform enabling indigenous women to seek recourse before the national Human Rights Commission.

27. The forum also highlighted a number of delays, for instance in the implementation of the Kelowna Accord concluded in 2005 between Government ministers and indigenous organizations, and the continued existence of many conflicts relating to indigenous peoples' lands and territories. A particularly controversial issue, alluded to by a number of legislators during meetings with the Special Rapporteur, was Canada's negative vote on the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted at the first session of the Human Rights Council in June 2006.

28. The steps taken in Mexico to follow up the Special Rapporteur's report on his 2003 official visit include a number of activities carried out in conjunction with OHCHR within the framework of the project on the promotion and protection of the human rights of indigenous peoples in Central America, with a special focus on Guatemala and Mexico (see A/HRC/4/32/Add.4, paras. 65-70).

29. Despite some progress, many important human rights issues referred to in the Special Rapporteur's recommendations have yet to be addressed in Mexico. It is difficult to implement the constitutional framework on indigenous rights, not only for reasons of political will but also because of its lack of coherence and legal ambiguity. The agrarian legal and judicial system is obsolete in relation to the contemporary recognition of indigenous peoples' rights over their land and natural

resources, and environmental policies have failed to sufficiently involve indigenous peoples. Development projects, such as the La Parota dam in the State of Guerrero, which has caused serious social conflict in the region, continue to threaten indigenous livelihoods.

30. National consultations on the implementation of the recommendations contained in the Special Rapporteur's report on his 2002 official visit to the Philippines were held in that country in 2007. Despite the progress achieved in certain areas, such as education and institutional reform (see A/HRC/4/32/Add.4, paras. 71-75), the status of indigenous peoples has not changed significantly since the last assessment of their situation four years ago. The considerable efforts of some public bodies, such as the National Commission on Indigenous Peoples and the National Commission on Human Rights, have still not made an impact on the human rights violations to which indigenous communities are subjected.

31. In some respects, it is clear that the human rights situation of indigenous peoples in the Philippines has worsened since 2002. While it is commendable that many communities have received certificates of ancestral domain title, complaints concerning land losses and lack of access to the natural resources necessary for survival persist. The rapid loss of forest resources, on which the livelihoods of many communities rely, is cause for concern. The legal framework underpinning current economic policies promotes the practice of stripping indigenous peoples of their lands, thereby benefiting a small group of international companies and other private interest groups holding concessions for mining, fishing, plantation agriculture, tourism and other activities undertaken at the expense of the ancestral rights of indigenous people, many of whom are facing forced eviction and other difficulties. The increase in extrajudicial killings, torture, enforced disappearances, unlawful detention and other serious human rights violations committed by the police, the army and paramilitary groups during ongoing social conflicts is also extremely serious.

32. An international expert seminar on best practices in the implementation of the Special Rapporteur's recommendations was held, under the auspices of the Government agency Rights and Democracy, the International Work Group for Indigenous Affairs (IWGIA) and other civil-society organizations, in Montreal from 5 to 7 October 2006. The seminar allowed the Special Rapporteur to hear the experiences and opinions of a large group of experts, including representatives of indigenous peoples, international organizations, regional human rights organizations and non-governmental organizations, on the impact of the recommendations set out in his country and thematic reports. The seminar's main conclusions, which provided valuable input to the study on best practices presented to the Human Rights Council, were the subject of a recent publication.[1]

E. Other activities

33. In April 2007, the Special Rapporteur took part in a joint technical assistance mission to Nepal with the Special Rapporteur on contemporary forms of racism,

[1] *Indigenous Peoples' Rights. The UN Special Rapporteur: Experiences and challenges. International Centre for Human Rights and Democratic Development, International Work Group for Indigenous Affairs (IWGIA), Tebtebba Foundation and Canadian Friends Service Committee (Quakers).* IWGIA Document No. 118, Copenhagen, 2007.

racial discrimination, xenophobia and related intolerance, Doudou Diène, and two experts from the Sub-Commission on the Promotion and Protection of Human Rights in order to provide technical assistance to OHCHR in Nepal in the design of its country-level policies on discrimination, with special emphasis on the situation of indigenous peoples, Dalits and other minorities, and to collect information on the human rights situation of the various indigenous groups.

34. Nepal is an extremely heterogeneous and culturally diverse country. However, its diversity has not been recognized by the State, which, from the outset, was constructed on an exclusionary model based on the language, culture and identity of the minority elite who have dominated Government structures and public life for more than two centuries. The fight against the structural discrimination caused by the State's exclusionary model is one of the greatest challenges for the country's current transition to democracy, which began with the people's movement of April 2006.

35. Indigenous peoples, known in Nepal as Adivasis or Janajatis ("nationalities"), account for 37 per cent of the country's population. Under the umbrella of the Nepal Federation of Indigenous Nationalities (NEFIN), they are, collectively, one of the main players in the current democratic transition process and are calling for the recognition of a new multi-faith, multi-ethnic, multilingual and multicultural State model. Indigenous peoples have also called for a far-reaching reform of the unitary State structure, including the creation of autonomous regions with the power to draft and implement standards and public policies on issues affecting them.

36. With a view to strengthening the mechanisms designed to safeguard indigenous peoples' rights, the Nepalese Parliament began the process of ratifying International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries. Ratification of that Convention, which, at the time of writing, was still pending before the Government, would be a significant step forward because it would ensure that the adoption of new standards and public policies was informed by progress made with regard to the protection and promotion of the rights of indigenous peoples at the international level.

37. In February 2007, two important meetings were held in Cambodia. The first was a seminar on indigenous peoples and access to land in Cambodia, organized by ILO, the Cambodian NGO Forum and OHCHR and attended by officials from various ministries dealing with the status of indigenous communities' land, as well as by representatives of those communities, international organizations and NGOs. The second meeting was the first Asian regional consultation with the Special Rapporteur. It was organized by the Tebtebba Foundation and the Asia Indigenous Peoples Pact Foundation (AIPP), with the support of IWGIA and the Regional Initiative on Indigenous Peoples' Rights and Development in the Asia Pacific (RIPP) of the United Nations Development Programme (UNDP). The consultation was attended by representatives of many organizations and indigenous experts from Asia, who gave the Special Rapporteur a comprehensive account of the main human rights issues affecting indigenous peoples in the region. The presentations and constructive debate that took place during the regional consultation, the first event of this type to be organized by the Special Rapporteur, contributed significantly to the identification of priorities for his future activities relating to Asia.

38. His participation in both the events held in Cambodia also offered the Special Rapporteur the opportunity to initiate a constructive dialogue with United Nations agencies and indigenous organizations in the country. They, among others, expressed their concern about the new land policy that is currently under discussion. That policy was the subject of a recent exchange of information between the Special Rapporteur and the Government; it is hoped that that preliminary exchange will contribute to the effective implementation, in cooperation with OHCHR, ILO and other relevant stakeholders, of existing domestic provisions designed to protect indigenous rights.

39. On 26 and 27 March 2007, the Special Rapporteur took part in the Arctic regional workshop on indigenous peoples' territories, lands and natural resources, organized in Copenhagen by the Sami Parliamentary Council, in collaboration with the Inuit Circumpolar Council and the Sami Council. The Arctic regional workshop was attended by the Chairperson and other members of the Permanent Forum on Indigenous Issues, representatives of Denmark, Finland, Norway and Sweden, representatives of the Sami Parliament and the autonomous government of Greenland, representatives of indigenous organizations and independent experts. The workshop, which provided input to the debate on the special theme of the sixth session of the Permanent Forum, gave the Special Rapporteur an in-depth view of the status of indigenous lands and territories in the region and provided him with an opportunity to initiate a dialogue on those issues with government officials and indigenous organizations.

40. To mark the 80th anniversary of the establishment of the ILO Committee of Experts on the Application of Conventions and Recommendations, an international colloquium entitled "Protecting labour rights as human rights: Present and future of international supervision" was held in Geneva in November 2006. As part of efforts to enhance his collaboration with ILO in the area of the application of international standards, the Special Rapporteur shared his experiences with issues relating to indigenous and tribal peoples that fell within the scope of the Organization's standards.

41. ILO Convention No. 169, the only international agreement focusing specifically on the human rights of indigenous peoples, has also been the subject of discussions at the German Bundestag, where, in February 2007, the Special Rapporteur was invited to speak to legislators about the importance of ratifying the Convention. Despite the interest and good faith of many members of that body, the proposal to ratify Convention No. 169 was not adopted on that occasion.

42. In July 2007, at the invitation of the Permanent Forum on Indigenous Issues, the Special Rapporteur took part in an international workshop on indigenous peoples and international companies, held in the Yamal-Nenets district of the Russian Federation. During the workshop, detailed descriptions were given of the human rights problems facing indigenous populations in regions such as Siberia, where heavy mining for hydrocarbons has, for several decades, been affecting the environment and the human rights of the local population. As well as human rights issues, the relevant obligations of State and private entities were also discussed.

43. In May 2007, as in previous years, the Special Rapporteur took part in the Permanent Forum on Indigenous Issues session in New York, during which he informed participants of his activities. The debate allowed him to reflect, together with Forum members, indigenous organizations and Government delegations, on the

general situation of indigenous rights and current trends, with particular emphasis on the situation of indigenous women and children. Issues relating to the protection of the human rights of indigenous peoples in Asia were also discussed and, in that context, the Special Rapporteur submitted a paper on the human rights situation of indigenous peoples in that region (E/C.19/2007/CRP.11). As on other occasions, he has stayed in contact with Government delegations, indigenous organizations and international agencies, which has allowed him to continue gathering information on developments affecting the human rights situation of indigenous peoples in specific countries and regions and to identify priority areas of action for the future. He takes the view that coordination between the Permanent Forum and the Special Rapporteur regarding the promotion and protection of the human rights of indigenous peoples is of the utmost importance.

IV. The situation of the rights of indigenous peoples in Asia

44. During the period under review the Special Rapporteur collected information from various sources on the situation of the human rights and fundamental freedoms of indigenous peoples in Asia; some of the activities described above were helpful in that regard. The situation of indigenous peoples, which represent tens of millions of individuals and are present in virtually all the countries of the region, has long been neglected and has only recently begun to be considered at the international level. One reason for the lack of a comprehensive analysis of the human rights problems faced by these peoples is the history of differences between Asian States in terms of how their laws and public policies refer to these peoples and define their legal status. Thus, while States such as Cambodia, Nepal and the Philippines explicitly use the term "indigenous", which is now used in international discourse on the subject, other countries have traditionally used different expressions, such as "tribal peoples" and "hill tribes", as well as similar expressions in local languages, such as Adivasis or Orang Asli, which refer to the idea of aboriginality. In other countries the legal and constitutional treatment of these peoples is not noticeably different from that of other minority groups; rather, they are subsumed under the category of "ethnic minorities" or "national minorities".

45. Irrespective of these variations, what these peoples have in common with indigenous peoples in other parts of the world is a set of cultural, social and economic characteristics that make them particularly vulnerable to marginalization and discrimination by majority sectors of the population in the countries they inhabit, exclude them from decision-making processes at all levels in their own countries and make them victims of systematic human rights violations.

46. The indigenous peoples of Asia are experiencing serious human rights violations as a result of the loss of their ancestral lands and territories. This process has gained momentum in recent decades and, in some cases, puts these peoples at risk of disappearing completely as peoples. The factors driving this process include the new push for large-scale plantation agriculture, especially in Indonesia, Malaysia and other South-East Asian countries, and the dramatic pace of deforestation as a result of State concessions and illegal logging. Peoples whose cultures and subsistence are inextricably linked to forests are particularly vulnerable to these processes, and in most countries they lack any means of defending their rights against State claims of ownership of forest areas.

47. Of special concern is the systematic practice of forcibly displacing and relocating indigenous communities to make way for the construction of infrastructure mega-projects, especially dams, or extractive activities. This practice has led to the removal of millions of indigenous and tribal families from their ancestral lands in countries such as India and China, at an incalculable human cost. The forced removal of these communities sometimes reflects a deliberate State policy of pursuing so-called economic "modernization" and eradication of traditional forms of shifting cultivation, as, for example, in the Lao People's Democratic Republic and Viet Nam, or the eradication of illicit crops, as in Thailand. The goal of modernization has also led to policies of sedentarizing peoples that traditionally practise nomadic herding in large areas of the Mongolian and Central Asian grasslands.

48. In the majority of cases, violations of indigenous peoples' land and natural resource rights are made possible by gaps in legislation in the Asian countries, most of which recognize neither indigenous ownership based on ancestral possession and use nor traditional cultivation or herding practices on an equal footing with other forms of production. To fill these gaps, some countries have adopted specific legislation on indigenous lands and resources, as in the recent case of India, which in 2006 adopted a new law recognizing the Adivasis' forest rights. Experience shows, however, that even where specific laws exist on indigenous lands, as in the case of the Philippines' Indigenous Peoples' Rights Act of 1997 or Cambodia's Land Act of 2001, their provisions are not fully enforced and indigenous peoples have complained that they are insufficiently implemented.

49. Cambodia s Land Act of 2001 is one of the few examples in Asia of legislation that expressly recognizes the rights of indigenous peoples and communities to their ancestral lands and natural resources, including recognition of their traditional practice of shifting cultivation. Even though this advanced legislation is in place, the indigenous communal land demarcation and titling process (regulated by the 2001 Act) is paralysed by the lack of implementing legislation or clear administrative guidelines. As currently designed, the demarcation process, which requires that indigenous communities be registered as public law entities, is a slow and cumbersome procedure that leaves such communities unprotected pending the issuance of the final communal property title.

50. When land ownership conflicts arise, in practice private interests with title to property are given priority over indigenous communities' claims. This, together with the failure to enforce the penalties established by the Land Act for cases of abuse, has helped to generate a climate of corruption and impunity whose end result has been to seriously reduce land ownership by indigenous peoples, to the point where many communities fear that there will be no land left to demarcate by the time demarcation is actually implemented.

51. Other major problems affecting indigenous land ownership in Cambodia include the granting of concessions for natural resource exploitation in areas that are part of indigenous ancestral territories. These concessions, which are inconsistent with the provisions of the Land Act and international indigenous rights standards, cause serious social problems, including the dispossession and eviction of indigenous communities.

52. Indigenous peoples in Asia have been especially hard hit by the armed conflicts that have plagued more than a few countries in the region since

independence, as shown by the recent or ongoing conflicts in Bangladesh, Myanmar, Nepal, north-eastern India, Indonesia and the Philippines. In some cases, indigenous communities have reacted to the denial of their rights by resorting to violence and joining the ranks of various insurgent movements. This has fuelled the generation of a vicious circle in which indigenous and tribal populations have been victimized by both insurgent violence and State repression, with widespread human rights abuses.

53. The Special Rapporteur has received many reports documenting the rights violations suffered by indigenous leaders and communities caught in the middle of these conflicts, including massacres, extrajudicial killings, disappearances and torture. Similar acts have been perpetrated in other countries in the name of the war on terror or drug trafficking, and have given rise to states of emergency involving looser enforcement of individual guarantees and the implementation of special legislation that has opened the door to abuse and impunity. This is the case, for example, of the Armed Forces (Special Powers) Act, which has been in force for decades in several states of north-eastern India and has been denounced by a number of international human rights organizations. Similarly, since the January 2007 declaration of a state of emergency in Bangladesh, numerous reports have been received of police and judicial persecution of prominent indigenous leaders in the Chittagong Hill Tracts and other parts of the country.

54. In the Philippines, political assassinations, including the killings of dozens of indigenous leaders and activists, have captured the attention of international human rights mechanisms. The Special Rapporteur denounced this situation at the time of his first visit to the Philippines, in 2002. In January 2007 he visited the country again and found that the number of killings had increased by more than 80, but the State had not yet taken effective measures to address the situation or provide reparation to the victims. In many of the cases documented, the violence is said to be linked to the defence of indigenous people's land and natural resource rights.

55. In Viet Nam and the Lao People's Democratic Republic, the Degar (Montagnard) and Hmong peoples continue to suffer repression as a consequence of their involvement in cold-war conflicts more than three decades ago, and serious violations of their rights have been documented. While many communities try to survive by seeking refuge in the forest, others have been able to escape into neighbouring countries such as Cambodia or Thailand, where they are sometimes detained under harsh conditions or returned to their countries of origin.

56. Several countries have promoted constructive arrangements for ending the conflicts that have broken out in Asia since the States of the region became independent and for recognizing and accommodating ethnic diversity within their own societies. Some of these arrangements lay the foundation for indigenous peoples' self-government with respect to decisions on issues that affect them directly, and open up opportunities for the effective promotion of their rights. Experience suggests, however, that these constructive arrangements have not been fully implemented in many cases and that they sometimes serve to mask continued acts of conflict and repression.

57. Peace agreements between various insurgent groups and the Governments of Bangladesh (in the case of the Chittagong Hill Tracts), India (in the case of Nagaland) and Indonesia (in the case of West Papua and, more recently, Aceh) are examples of such constructive arrangements that are intended to put an end to decades of conflict through the recognition of an autonomous status that sometimes

directly includes the indigenous peoples living in those regions. In most cases, however, indigenous peoples' hopes for a peaceful solution to conflict situations have been frustrated by the failure to implement these peace agreements or by the implementation of conflicting Government policies, particularly in the areas of demilitarization, internal migration and land rights. Occasionally, patterns of violence and human rights abuses typical of the conflict situations that these agreements seek to address are still discernible.

58. Women and girls are particularly affected by armed conflicts involving indigenous peoples, where sexual violence is systematically used as a weapon of war. Their situation of vulnerability makes them more likely than other population groups to be victimized by human trafficking networks or forced to become economic migrants under conditions of extreme precariousness, abuse and violence.

V. Conclusion

59. The effective recognition of indigenous peoples' rights is a human rights imperative which no country can subordinate to the objectives of national unity or development and which, in fact, strengthens progress towards these objectives rather than hindering it. The Special Rapporteur calls on all Member States and particularly, on this occasion, the Asian States to give priority attention to indigenous communities, regardless of the legal status afforded to these groups in their domestic systems, taking into consideration international norms and the positive examples found in comparative legislation in Asia and other parts of the world.

60. Asian States should be actively and constructively involved in international discussions concerning the rights of indigenous peoples, particularly regarding the Human Rights Council's activities in this area. Asian States, particularly those that are parties to International Labour Organization Convention No. 107, should consider promptly ratifying ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries.

61. To enable the world's indigenous peoples to exercise all their human rights fully and effectively, the international community must recognize and respect the provisions of the Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council in June 2006. The United Nations system, at all levels, has the ineluctable responsibility of championing the principles and objectives of this Declaration for the benefit of the hundreds of millions of people in the world who are of indigenous origin and whose rights have been trampled for so long. The General Assembly, in accordance with the founding principles set out in the Charter of the United Nations, should now embark on this momentous task.